

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Terrance Lee Dzvonick,)	
)	
Plaintiff,)	
vs.)	Case No.: 2:10-cv-00598-GMN-PAL
)	
JP Morgan Chase,)	
)	ORDER
Defendant.)	
)	

Pending before the Court is the Motion to Dismiss (ECF No. 23) and the Motion to Expunge Lis Pendens (ECF No. 24) filed by Defendant JP Morgan Chase Bank, N.A., for itself and as acquirer of certain assets and liabilities of Washington Mutual Bank from the Federal Deposit Insurance Corporation, acting as Receiver (“Chase”).

I. PROCEDURAL HISTORY

Plaintiff filed his initial Complaint (ECF No. 1) before this Court on April 26, 2010, along with a Notice of Lis Pendens (ECF No. 2) and an Ex Parte Motion for Temporary Restraining Order (ECF No. 4), which was denied on May 6, 2010 (Order, ECF No. 7). Plaintiff’s First Amended Complaint (ECF No. 14) was filed on June 25, 2010, along with another Motion for Temporary Restraining Order (ECF No. 12) and Motion for Preliminary Injunction (ECF No. 13). The Court denied the motions on November 12, 2010. (Order, ECF No. 18.)

In the First Amended Complaint, Plaintiff named as Defendants “JP Morgan Chase, its successor and/or assigns, and/or successors in interest, Washington Mutual, its successor and/or assigns, National Association, its successor and/or assigns, and/or successors in interest, Nevada Legal News, and all undisclosed mortgage aggregators (wholesalers), mortgage originators, loan seller(s), Trustee of pooled and/or bundled

1 assets, trustee for holders of certificate of collateralized mortgage obligations, DOES 1-
2 100, inclusive.” (ECF No. 14.) On September 6, 2010, the action was dismissed as to
3 Defendants Washington Mutual, National Association, and Nevada Legal News pursuant
4 to Federal Rule of Civil Procedure 4(m). (Order, ECF No. 22.)

5 **II. LEGAL STANDARD**

6 Federal Rule of Civil Procedure 12(b)(6) mandates that a court dismiss a cause of
7 action that fails to state a claim upon which relief can be granted. *See North Star Int’l. v.*
8 *Arizona Corp. Comm’n.*, 720 F.2d 578, 581 (9th Cir. 1983). When considering a motion
9 to dismiss under Rule 12(b)(6) for failure to state a claim, dismissal is appropriate only
10 when the complaint does not give the defendant fair notice of a legally cognizable claim
11 and the grounds on which it rests. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555
12 (2007). In considering whether the complaint is sufficient to state a claim, the Court will
13 take all material allegations as true and construe them in the light most favorable to the
14 plaintiff. *See NL Indus., Inc. v. Kaplan*, 792 F.2d 896, 898 (9th Cir. 1986).

15 The Court, however, is not required to accept as true allegations that are merely
16 conclusory, unwarranted deductions of fact, or unreasonable inferences. *See Sprewell v.*
17 *Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). A formulaic recitation of a
18 cause of action with conclusory allegations is not sufficient; a plaintiff must plead facts
19 showing that a violation is *plausible*, not just possible. *Ashcroft v. Iqbal*, 129 S. Ct. 1937,
20 1949 (2009) (citing *Twombly*, 550 U.S. at 555) (emphasis added).

21 A court may also dismiss a complaint pursuant to Federal Rule of Civil Procedure
22 41(b) for failure to comply with Federal Rule of Civil Procedure 8(a). *Hearns v. San*
23 *Bernardino Police Dept.*, 530 F.3d 1124, 1129 (9th Cir.2008). Rule 8(a)(2) requires that
24 a plaintiff’s complaint contain “a short and plain statement of the claim showing that the
25 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). “Prolix, confusing complaints”

1 should be dismissed because “they impose unfair burdens on litigants and judges.”
2 *McHenry v. Renne*, 84 F.3d 1172, 1179 (9th Cir.1996). Mindful of the fact that the
3 Supreme Court has “instructed the federal courts to liberally construe the ‘inartful
4 pleading’ of pro se litigants,” *Eldridge v. Block*, 832 F.2d 1132, 1137 (9th Cir. 1987), the
5 Court will view Plaintiff’s pleadings with the appropriate degree of leniency.

6 “Generally, a district court may not consider any material beyond the pleadings in
7 ruling on a Rule 12(b)(6) motion However, material which is properly submitted as
8 part of the complaint may be considered on a motion to dismiss.” *Hal Roach Studios, Inc.*
9 *v. Richard Feiner & Co.*, 896 F.2d 1542, 1555 n.19 (9th Cir. 1990) (citations omitted).
10 Under Federal Rule of Evidence 201, a court may take judicial notice of “matters of
11 public record.” *Mack v. S. Bay Beer Distrib.*, 798 F.2d 1279, 1282 (9th Cir. 1986).
12 Otherwise, if the district court considers materials outside of the pleadings, the motion to
13 dismiss is converted into a motion for summary judgment. *See Arpin v. Santa Clara*
14 *Valley Transp. Agency*, 261 F.3d 912, 925 (9th Cir. 2001).

15 If the court grants a motion to dismiss, it must then decide whether to grant leave
16 to amend. The court should “freely give” leave to amend when there is no “undue delay,
17 bad faith[,] dilatory motive on the part of the movant . . . undue prejudice to the opposing
18 party by virtue of . . . the amendment, [or] futility of the amendment” Fed. R. Civ. P.
19 15(a); *Foman v. Davis*, 371 U.S. 178, 182 (1962). Generally, leave to amend is only
20 denied when it is clear that the deficiencies of the complaint cannot be cured by
21 amendment. *See DeSoto v. Yellow Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992).

22 **III. DISCUSSION**

23 First, the Court agrees with Defendant that service does not appear to have been
24 properly effected, and that dismissal pursuant to Federal Rule of Civil Procedure 4(m)
25 would have been appropriate.

1 Also, on February 2010, Plaintiff filed an action in the Eighth Judicial District
2 Court, Clark County, Nevada, *Dzvonick v. Chase Bank*, Case No. A-10-610522-C (2010).
3 (Ex. A to Mot. to Dismiss, ECF No. 23.) That case was litigated to final judgment, and
4 Plaintiff's complaint here is substantively similar to the instant complaint. (*See id.*; First
5 Am. Compl., ECF No. 14.) Accordingly, this Court finds that Plaintiff's claims are also
6 subject to dismissal because they are barred by the doctrines of *res judicata* and of issue
7 and claim preclusion.


8 Finally, the Court finds that Plaintiff's second attempt at stating a claim with his
9 First Amended Complaint fails to satisfy the pleading standards of Federal Rule of Civil
10 Procedure 12(b)(6) and Rule 8(a). Accordingly, the Court finds that Plaintiff's complaint
11 is also subject to dismissal on these grounds.

12 Therefore, having reviewed the briefs of the parties, and for the reasons stated
13 above and in Defendant's motion, Plaintiff's complaint will be dismissed, with prejudice.

14 **IV. CONCLUSION**

15 **IT IS HEREBY ORDERED** that the Motion to Dismiss and Motion to Expunge
16 Lis Pendens (ECF Nos. 23, 24) (ECF No. 23) are **GRANTED**. Plaintiff's Complaint is
17 dismissed. The Clerk shall enter judgment accordingly.

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19 DATED this 18th day of December, 2012.

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22 
23 Gloria M. Navarro
24 United States District Judge
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